



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2709

Introduced 02/22/05, by Rep. Gary Hannig

SYNOPSIS AS INTRODUCED:

35 ILCS 5/1109
35 ILCS 120/5f

from Ch. 120, par. 11-1109
from Ch. 120, par. 444f

Amends the Illinois Income Tax Act and the Retailers' Occupation Tax Act. Authorizes the Department of Revenue to issue a warrant directed to any agent of the Department's Bureau of Criminal Investigations commanding the agent to levy upon the property and rights to property of a taxpayer within his jurisdiction the amount of tax not paid under the applicable Act. Effective July 1, 2005.

LRB094 03910 MKM 33923 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning taxes.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 1109 as follows:

6 (35 ILCS 5/1109) (from Ch. 120, par. 11-1109)

7 Sec. 1109. Demand and Seizure. In addition to any other
8 remedy provided for by the laws of this State, if the tax
9 imposed by this Act is not paid within the time required by
10 this Act, the Department, or some person designated by it, may
11 cause a demand to be made on the taxpayer for the payment
12 thereof. If such tax remains unpaid for 10 days after such
13 demand has been made and no proceedings have been taken to
14 review the same, the Department may issue a warrant directed to
15 any sheriff, agent of the Department's Bureau of Criminal
16 Investigations, or other person authorized to serve process,
17 commanding the sheriff, agent, or other person to levy upon the
18 property and rights to property (whether real or personal,
19 tangible or intangible) of the taxpayer, without exemption,
20 found within his jurisdiction, for the payment of the amount
21 thereof with the added penalties, interest and the cost of
22 executing the warrant. The term "levy" includes the power of
23 distraint and seizure by any means. In any case in which the
24 warrant to levy has been issued, the sheriff, agent, or other
25 person to whom the warrant was directed may seize and sell such
26 property or rights to property. Such warrant shall be returned
27 to the Department together with the money collected by virtue
28 thereof within the time therein specified, which shall not be
29 less than 20 nor more than 90 days from the date of the
30 warrant. The sheriff, agent, or other person to whom such
31 warrant is directed shall proceed in the same manner as
32 prescribed by law in respect to the enforcement against

1 property upon judgments by a court, and shall be entitled to
2 the same fees for his services in executing the warrant, to be
3 collected in the same manner. The Department, or some officer,
4 employee or agent designated by it, is hereby authorized to bid
5 for and purchase any property sold under the provisions hereof.
6 No proceedings for a levy under this Section shall be commenced
7 more than 20 years after the latest date for filing of the
8 notice of lien under the provisions of Section 1103, without
9 regard to whether such notice was actually filed.

10 Any officer or employee of the Department designated in
11 writing by the Director is authorized to serve process under
12 this Section to levy upon accounts or other intangible assets
13 of a taxpayer held by a financial organization, as defined in
14 Section 1501 of this Act. In addition to any other provisions
15 of this Section, any officer or employee of the Department
16 designated in writing by the Director may levy upon the
17 following property and rights to property belonging to a
18 taxpayer: contractual payments, accounts and notes receivable
19 and other evidences of debt, and interest on bonds, by serving
20 a notice of levy on the person making such payment. Levy shall
21 not be made until the Department has caused a demand to be made
22 on the taxpayer in the manner provided above. In addition to
23 any other provisions of this Section, any officer or employee
24 of the Department designated in writing by the Director, may
25 levy upon the salary, wages, commissions and bonuses of any
26 employee, including officers, employees, or elected officials
27 of the United States as authorized by Section 5520a of the
28 Government Organization and Employees Act (5 U.S.C. 5520a), but
29 not upon the salary or wages of officers, employees, or elected
30 officials of any state other than this State, by serving a
31 notice of levy on the employer, as defined in Section 701(d).
32 Levy shall not be made until the Department has caused a demand
33 to be made on the employee in the manner provided above. The
34 provisions of Section 12-803 of the Code of Civil Procedure
35 relating to maximum compensation subject to collection under
36 wage deduction orders shall apply to all levies made upon

1 compensation under this Section. To the extent of the amount
2 due on the levy, the employer or other person making payments
3 to the taxpayer shall hold any non-exempt wages or other
4 payments due or which subsequently come due. The levy or
5 balance due thereon is a lien on wages or other payments due at
6 the time of the service of the notice of levy, and such lien
7 shall continue as to subsequent earnings and other payments
8 until the total amount due upon the levy is paid, except that
9 such lien on subsequent earnings or other payments shall
10 terminate sooner if the employment relationship is terminated
11 or if the notice of levy is rescinded or modified. The employer
12 or other person making payments to the taxpayer shall file, on
13 or before the return dates stated in the notice of levy (which
14 shall not be more often than bimonthly) a written answer under
15 oath to interrogatories, setting forth the amount due as wages
16 or other payments to the taxpayer for the payment periods
17 ending immediately prior to the appropriate return date. A lien
18 obtained hereunder shall have priority over any subsequent lien
19 obtained pursuant to Section 12-808 of the Code of Civil
20 Procedure, except that liens for the support of a spouse or
21 dependent children shall have priority over all liens obtained
22 hereunder.

23 In any case where property or rights to property have been
24 seized by an officer of the Illinois Department of State
25 Police, or successor agency thereto, under the authority of a
26 warrant to levy issued by the Department of Revenue, the
27 Department of Revenue may take possession of and may sell such
28 property or rights to property and the Department of Revenue
29 may contract with third persons to conduct sales of such
30 property or rights to the property. In the conduct of such
31 sales, the Department of Revenue shall proceed in the same
32 manner as is prescribed by law for proceeding against property
33 to enforce judgments which are entered by a circuit court of
34 this State. If, in the Department of Revenue's opinion, no
35 offer to purchase at such sale is acceptable and the State's
36 interest would be better served by retaining the property for

1 sale at a later date, then the Department may decline to accept
2 any bid and may retain the property for sale at a later date.

3 (Source: P.A. 89-399, eff. 8-20-95.)

4 Section 10. The Retailers' Occupation Tax Act is amended by
5 changing Section 5f as follows:

6 (35 ILCS 120/5f) (from Ch. 120, par. 444f)

7 Sec. 5f. In addition to any other remedy provided for by
8 the laws of this State, if the tax imposed by this Act is not
9 paid within the time required by this Act, the Department, or
10 some person designated by it, may cause a demand to be made on
11 the taxpayer for the payment of the tax. If the tax remains
12 unpaid for 10 days after demand has been made and no
13 proceedings have been taken for review, the Department may
14 issue a warrant directed to the sheriff of any county of the
15 State or to any State officer authorized to serve process,
16 commanding the sheriff, agent of the Department's Bureau of
17 Criminal Investigations, or other officer to levy upon property
18 and rights to property (whether real or personal, tangible or
19 intangible) of the taxpayer, without exemption, found within
20 his or her jurisdiction, for the payment of the amount of
21 unpaid tax with the added penalties, interest and the cost of
22 executing the warrant. The term "levy" includes the power of
23 distraint and seizure by any means. In any case in which the
24 warrant to levy has been issued, the sheriff, agent, or other
25 person to whom the warrant was directed may seize and sell such
26 property or rights to property. Such warrant shall be returned
27 to the Department together with the money collected by virtue
28 of the warrant within the time specified in the warrant, which
29 may not be less than 20 nor more than 90 days from the date of
30 the warrant. The sheriff, agent, or other officer to whom such
31 warrant is directed shall proceed in the same manner as is
32 prescribed by law for proceeding against property to enforce
33 judgments which are entered by a circuit court of this State,
34 and is entitled to the same fees for his or her services in

1 executing the warrant, to be collected in the same manner. The
2 Department, or some officer, employee or agent designated by
3 it, may bid for and purchase any such property sold.

4 No proceedings for a levy under this Section may be
5 commenced more than 20 years after the latest date for filing
6 of the notice of lien under Section 5b of this Act, without
7 regard to whether such notice was actually filed.

8 Any officer or employee of the Department designated in
9 writing by the Director is authorized to serve process under
10 this Section to levy upon accounts or other intangible assets
11 of a taxpayer held by a financial organization, as defined by
12 Section 1501 of the Illinois Income Tax Act. In addition to any
13 other provisions of this Section, any officer or employee of
14 the Department designated in writing by the Director may levy
15 upon the following property and rights to property belonging to
16 a taxpayer: contractual payments, accounts and notes
17 receivable and other evidences of debt, and interest on bonds,
18 by serving a notice of levy on the person making such payment.
19 Levy shall not be made until the Department has caused a demand
20 to be made on the taxpayer in the manner provided above. In
21 addition to any other provisions of this Section, any officer
22 or employee of the Department designated in writing by the
23 Director, may levy upon the salary, wages, commissions and
24 bonuses of any employee, including officers, employees, or
25 elected officials of the United States as authorized by Section
26 5520a of the Government Organization and Employees Act (5
27 U.S.C. 5520a), but not upon the salary or wages of officers,
28 employees, or elected officials of any state other than this
29 State, by serving a notice of levy on the employer. Levy shall
30 not be made until the Department has caused a demand to be made
31 on the employee in the manner provided above. The provisions of
32 Section 12-803 of the Code of Civil Procedure relating to
33 maximum compensation subject to collection under wage
34 deduction orders shall apply to all levies made upon
35 compensation under this Section. To the extent of the amount
36 due on the levy, the employer or other person making payments

1 to the taxpayer shall hold any non-exempt wages or other
2 payments due or which subsequently come due. The levy or
3 balance due thereon is a lien on wages or other payments due at
4 the time of the service of the notice of levy, and such lien
5 shall continue as to subsequent earnings and other payments
6 until the total amount due upon the levy is paid, except that
7 such lien on subsequent earnings or other payments shall
8 terminate sooner if the employment relationship is terminated
9 or if the notice of levy is rescinded or modified. The employer
10 or other person making payments to the taxpayer shall file, on
11 or before the return dates stated in the notice of levy (which
12 shall not be more often than bimonthly) a written answer under
13 oath to interrogatories, setting forth the amount due as wages
14 or other payments to the taxpayer for the payment periods
15 ending immediately prior to the appropriate return date. A lien
16 obtained hereunder shall have priority over any subsequent lien
17 obtained pursuant to Section 12-808 of the Code of Civil
18 Procedure, except that liens for the support of a spouse or
19 dependent children shall have priority over all liens obtained
20 hereunder.

21 In any case where property or rights to property have been
22 seized by an officer of the Illinois Department of Law
23 Enforcement, or successor agency thereto, under the authority
24 of a warrant to levy issued by the Department of Revenue, the
25 Department of Revenue may take possession of and may sell such
26 property or rights to property and the Department of Revenue
27 may contract with third persons to conduct sales of such
28 property or rights to the property. In the conduct of such
29 sales, the Department of Revenue shall proceed in the same
30 manner as is prescribed by law for proceeding against property
31 to enforce judgments which are entered by a circuit court of
32 this State. If, in the Department's opinion, no offer to
33 purchase at such sale is acceptable and the State's interest
34 would be better served by retaining the property for sale at a
35 later date, then the Department may decline to accept any bid
36 and may retain the property for sale at a later date.

1 (Source: P.A. 89-399, eff. 8-20-95.)

2 Section 99. Effective date. This Act takes effect July 1,
3 2005.